

AN ORDINANCE

TO PROVIDE AIR RIGHTS ENCROACHMENTS FOR OBJECTS AND DEVICES WHICH ARE NOT ATTACHED TO BUILDINGS OVER PUBLIC RIGHTS OF WAYS AND TO REVISE FOR CLARITY THE PROVISIONS ON ENCROACHMENTS IN PUBLIC RIGHTS OF WAY BY AMENDING SECTION 36-15, "ENCROACHMENTS," OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE

WHEREAS, Section 36-15, "Encroachments," of the Greenville City Code of Ordinances regulates the installation and maintenance of encroachments into the right of way; and

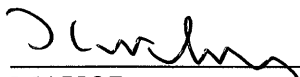
WHEREAS, there have been advances in technology to afford to the public opportunities to make internet connections if the requisite Wi-Fi devices could be available for the public at large as attachments to utility poles or otherwise in the public rights of way on public property near rights of way; and

WHEREAS, other municipalities with an interest in promoting technological advances have undertaken to make internet connections available to their citizenry and visitors by the installation of Wi-Fi devices in public space, including rights of way; and


WHEREAS, City Council desires to facilitate the future development of such opportunities by revising the terms and conditions of City Code Section 36-15, "Encroachments," to specify that such devices are permitted, subject to reasonable terms and conditions and at the same time to make corrections and clarifications in the same code section;

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA that City Code Section 36-15, "Encroachments," shall be amended in order to specify that objects and devices which are not attached to structures may be permitted as air rights encroachments over public rights of way and public property near rights of way. The amendments shall be those shown in the attached exhibit of City Code Section 36-15, with underlined words representing additions and strikes through words representing deletions. This Ordinance shall take effect upon second and final reading.

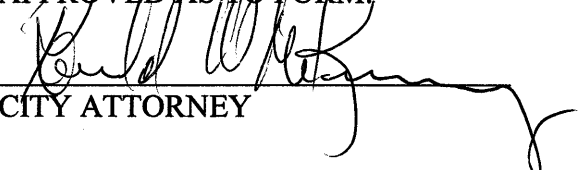
DONE, RATIFIED AND PASSED THIS THE 23 DAY OF April, 2012.

  
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MAYOR

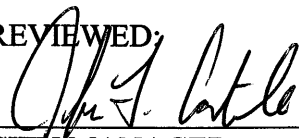
ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED:

A handwritten signature in black ink, appearing to read "John F. Little", is written over a horizontal line.

CITY MANAGER

**EXHIBIT****Sec. 36-15. - Encroachments.****(a) *General policy; purpose and intent.***

(1) There are, on occasion, reasons for property owners and/or building occupants, as well as owners or operators of existing utility facilities in or close to the right of way, or persons desiring to utilize such utility facilities by attaching devices to them or to install new fixtures for such devices, to request that they be allowed to encroach onto the city right-of-way and/or the airspace above a sidewalk or street or other public space within the central business district, or in some instances other specified areas of the city. It is the city's intent to allow those encroachments within certain limitations. The intent of this policy is to encourage economic development and revitalization of the central business district and commercial corridors, and to improve the quality of life in residential areas and parks.

(2) **Encroachment** An encroachment may be allowed on any city street in accordance with this section. All encroachment requests into public rights-of-way or public airspace will be evaluated based on the merits of each request at the time it is made, with due regard to the public benefit, if any, of the proposed encroachment and with a requirement that private benefit not unduly impinge upon public safety and good appearance of the right of way. The city may establish such conditions for each permit as may be appropriate for the public's safety and reasonable use of the right-of-way and principles of fairness for similarly situated owners, occupants, and operators. Encroachments on state roads may require permission from the state, and the provisions of this section are not intended to supersede any state law to that effect. Attachments to utility facilities may require permission from the utility. The duty to obtain permission from the state or utility shall be that of the applicant and not that of the city.

(3) The construction, use or demolition of the encroachment shall be at no expense to the city, unless the city council determines that the encroachment benefits the public at large and by resolution agrees to fund all or part of the construction. The duty to maintain the encroachment in good, safe, and functioning condition shall be that of the owner of the structure, fixture, object, or device

**(b) *Surface encroachments (such as steps, stairs, walls).***

(1) Surface encroachments on the public rights-of-way of the city may be authorized by the city manager on a temporary basis, or for a term of years not to exceed five years, provided the applicant establishes to the reasonable satisfaction of the city manager that the encroachment is consistent with the public's use of rights-of-way and that the encroachment causes no undue interference with the lawful use of nearby premises.

(2) Surface encroachments of the public rights-of-way of the city for a term of years in excess of five years, including perpetual encroachments, may be authorized by resolution of city council, provided the applicant establishes to the reasonable satisfaction of city council that the encroachment is consistent with the public's use of rights-of-way and that the encroachment causes no undue interference with the lawful use of nearby premises.

(3) Prior to the authorization of surface encroachments involving the placement or

extension of any structure, wall or object on the right-of-way, the applicant shall establish that:

a. The proposed placement or extension presents no physical threat of safety to pedestrians, motor vehicle drivers and passengers or others in lawful use of the right-of-way, or to their property.

b. The proposed placement or extension is compatible in use and design with the right-of-way.

c. In the case of building extensions, The the constructed extension will increase the assessed value of the building to which it is attached, or will increase its degree of compliance with applicable design principles required or promoted by the city, and will not decrease the value or meaningful use of any building in the immediate vicinity or use of right of way.

d. The proposed placement or extension of any structure, wall or object or device on the right-of-way shall be maintained, repaired or altered by its owner so as not to create a public nuisance, or constitute a danger to the public's health, safety or welfare.

(4) Whenever the city manager makes a finding that the encroachment is no longer in compliance with the provisions of the criteria of subsection (b)(3) of this section, he shall issue to the owner of the encroaching structure, wall, steps, other fixture, object or device ~~wall or object~~ a written notice stating the deficiencies and corrective action required and providing 30 days from the date of notice for compliance. If the owner fails to achieve compliance within 30 days, the city manager shall be authorized to have the encroachment removed and the costs of removal and storage, if any, assessed to the owner.

(c) *Non-structural air rights encroachments (~~such as~~ including awnings, signs, and other objects and devices).*

(1) Non-structural air rights encroachments above municipally owned streets, sidewalks and other public spaces are permitted, but are not required, to be granted when any applicant shall establish to the reasonable satisfaction of the city manager that the following criteria are met:

a. The proposed extension presents no physical threat of safety to pedestrians, motor vehicle drivers and passengers, or others in lawful use of the right-of-way or public space, or to their property;

b. The proposed extension is compatible in use and design with the right-of-way or public space;

c. In the case of building extensions, Owners owners and occupants of property located within 100 feet of the proposed encroachment have been sent written notice by mail, facsimile transmission, or e-mail of the proposed encroachment and have been provided an opportunity to respond within ten days of the date notice is sent;

d. In the case of building extensions, The the constructed extension will increase the assessed value of the building, to which it is attached and will not decrease the value of any building in the immediate vicinity.

e. In the case of attachments to utility poles and facilities, the owner of the pole or facility has reviewed the specifications of the object or device and has consented in writing to the attachment.

(2) After consultation with the director of public works, the city engineer and the director of economic development, the city manager may impose ~~restrictions and conditions may be imposed~~ as to height, weight and dimensions of the extension, aesthetics, or the time period of the permit, as may be appropriate to achieve the purposes of this section. The city manager may make such additional requirements as may be appropriate under customary business and legal practices.

(3) Whenever the city manager makes a finding that the encroachment is no longer in compliance with the provisions of the criteria of subsections (1) and (2) of this subsection (c), he shall issue to the owner of the encroaching extension a written notice stating the deficiencies and corrective action required and providing 30 days from the date of notice for compliance. If the owner fails to achieve compliance within 30 days, the city manager shall be authorized to have the encroachment removed and the costs of removal and storage, if any, assessed to the owner.

~~If structurally safe and well maintained, all prior non-structural encroachment permits, by whatever name designated, previously approved or agreed to in writing by the city shall continue in effect until such time the encroachment is proposed by the owner to be removed, repaired or altered in any material way, at which time an encroachment permit under this section shall be applied for. The city manager shall be authorized to charge an application fee for processing the application and an annual permit fee for administering permits pursuant to a schedule of fees prepared by the city manager.~~

(d) *Structural air rights encroachments (such as balconies, buildings, overhangs).*

(1) Structural air rights encroachments on the public rights-of-way of the city may be authorized by the city manager on a temporary basis, or for a term of years not to exceed five years, provided the applicant establishes to the reasonable satisfaction of the city manager that the encroachment is consistent with the public's use of rights-of-way and that the encroachment causes no undue interference with the lawful use of nearby premises.

(2) Structural air rights encroachments of the public rights-of-way of the city for a term of years in excess of five years, including perpetual encroachments, may be authorized by resolution of city council, provided the applicant establishes to the reasonable satisfaction of city council that the encroachment is consistent with the public's use of rights-of-way and that the encroachment causes no undue interference with the lawful use of nearby premises.

(3) Prior to the authorization of structural air rights encroachments involving the extension over the right-of-way, the applicant shall establish that:

a. The proposed placement or extension presents no physical threat of safety to pedestrians, motor vehicle drivers and passengers or others in lawful use of the right-of-way, or to their property.

b. The proposed placement or extension is compatible in use and design with the right-of-way.

c. The constructed extension will increase the assessed value of the building to which it is attached and will not decrease the value or meaningful use of any building in the immediate vicinity.

d. ~~The proposed placement or extension over the right-of-way shall be~~ The owner of the structural air rights encroachment must maintained, repaired or altered maintain, repair, or alter the encroaching structural component so as not to create a public nuisance, or constitute a danger to the public's health, safety or welfare. Any alteration requires approval in accordance with the procedures for application under this section.

(4) Whenever the city manager makes a finding that the encroachment is no longer in compliance with the provisions of the criteria of subsection (b) (3) of this section, he shall issue to the owner of the encroaching structure, wall or object a written notice stating the deficiencies and corrective action required and providing 30 days from the date of notice for compliance. If the owner fails to achieve compliance within 30 days, the city manager shall be authorized to have the encroachment removed and the costs of removal and storage, if any, assessed to the owner.

(5) When there is a question of whether an encroachment is a structural or nonstructural encroachment, the determination of the city's codes administrator shall control.

(e) *Review and approval; permit.*

(1) The applicant shall submit a written request to the public works director for consideration of an encroachment. The request shall provide details, drawings and the general specifications of the encroachment. After a site review by the city engineer, the building codes administrator and the public works director, a written decision will be provided to the ~~requester~~ applicant.

(2) Upon approval of the request, the applicant making the request shall do the following:

a. Apply for an encroachment permit to perform work within the public right-of-way from the ~~utility services technician~~ public works director's designee. Fees may be charged annually, as determined by the city manager, for the permit.

b. The ~~requesting party~~ applicant shall submit an approved hold harmless agreement to the city attorney's office for execution. It shall be the responsibility of the city attorney to set limits of the agreement to protect the city from any liability or cost incurred as a result of the encroachment. No work may proceed until the execution of this document and the performance of any requirements made therein such as the issuance of insurance policies, bonds, etc., which must be maintained during the term of the permit

c. Once the hold harmless agreement has been executed and the conditions therein met, the ~~requester~~ applicant shall obtain a permit from the building department in accordance with standard building department policy. The permit may provide for conditions of construction or installment, conditions of use, and conditions of maintenance in accordance with the interests of the public at large, or with the city's design and maintenance practices.

(3) Should sidewalk, curb lawn, or street improvements be necessary within the area of the ~~surface~~ encroachment, the ~~property owner~~ applicant/permittee shall ensure that the

sidewalk, curb lawn, or street ~~problems are corrected conditions to to the satisfaction of the public works director~~ improvements meet the city specifications otherwise in place upon completion of the encroachment.

(4) The city manager shall be authorized to charge an application fee for processing the application and an annual permit fee for administering permits pursuant to a schedule of fees prepared by the city manager.

***(Code 1985, §§ 5-11-17—5-11-20; Ord. No. 94-53, § 1(g), 10-10-94; Ord. No. 96-83, § 2, 9-23-96; Ord. No. 97-23, §§ 1—3, 5-19-97; Ord. No. 2005-48, Exh. A, 6-13-05)***